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DRAFT GUIDELINES ON KEY SECTORS FOR TRADE EFFICIENCY

CUSTOMS

Document prepared by the Customs Co-operation Council

A. INTRODUCTION

1. Customs plays a key role in international trade. Every international trade transaction involves at least two Customs interventions, one at export and one at import. It is clear, therefore, that the manner in which Customs conducts its business has a substantial impact on the movement of goods across international borders.

2. Customs, as an agency of government, has as its primary function the execution of government policy. Accordingly, although the responsibilities of Customs are basically the same in every country, it would be wrong to assume that there is uniformity or consistency in the emphasis which is placed on the discharge of these responsibilities. Different Governments expect different things from their Customs authorities. For some Governments, especially those in developing countries, Customs are the principal revenue collectors. For others, Customs form the front line in the fight against drugs or are key implementors of trade policy. The emphasis placed by Governments on the various tasks which Customs perform is a critical determining factor with regard to the approach which Customs adopts to its responsibilities.

3. The environment in which Customs operates is changing rapidly. Successive GATT rounds of tariff cuts have reduced the importance of Customs duties as contributors to national budgets. New challenges, however, have been presented to Customs. Many of these challenges come from external sources over which Customs administrations have little or no control. The volume of goods being traded has increased dramatically. More rapid means of transport have emerged which address the speed of delivery required by many industries. The scope of Customs activities has been broadened into areas as diverse as intellectual property rights, toxic wastes and endangered species. The demands by government economic planners for faster and more accurate statistics and projections have put many Customs authorities into the data processing business. These factors, coupled with calls for greater facilitation from traders and demands for greater community protection from ordinary citizens, have ensured that the typical Customs administration of today is faced with a very complex task. This task is not made any easier by the fact that, as a general rule, most administrations have been impacted by the worldwide trend for "smaller government" which has limited the manpower resources available to Customs.

4. The interventionist nature of Customs functions inevitably places Customs services at odds with commercial operators, whose primary goal is rapid delivery of their merchandise. Perhaps the greatest challenge facing Customs today is to reconcile the apparently contradictory objectives of enforcing government regulations while at the same time posing the minimum obstacle to legitimate trade. This is, in a very real sense, the dilemma which faces each and every Customs authority worldwide. The response of Customs has, in many cases, been very innovative and forward-looking. Greater use of information technology has helped. More emphasis on professional training for Customs staff has also contributed. The implementation of risk management techniques has focused attention on more productive targets for intervention.

B. RECOMMENDATIONS

1. Strategic planning

5. In spite of the very significant advances being made in many countries, there still remains considerable scope for further improvement. Modernization of Customs to fulfil its new and demanding role must start, however, with an enlightened management approach.

6. Today's Customs management needs to have a clear appreciation of Customs' role in its broadest sense. There must be an understanding of who Customs' clients are and how best they can be served. Consultation rather than autocracy should be the preferred approach. There are many examples of successful consultation structures involving Customs, other governmental agencies and the trading community such as national trade consultative bodies. Where such structures do not exist, measures should be taken to develop them. Customs should actively participate in the setting-up and functioning of such consultative machinery.

7. Most large organizations today develop a Business Plan which incorporates a Mission Statement, a clear set of Corporate Objectives and a Strategic Plan for achieving them. Customs should be no different from any other large organization in this respect.

8. Recommendation 1

Customs management should, in consultation with other interested parties (both governmental and non-governmental), clearly define its Corporate Objectives and develop and publish an overall Strategic Plan which sets out the manner in which it intends to achieve these objectives.

2. Customs formalities

9. Onerous Customs formalities are a frequent cause for complaint by the trading community. In many parts of the world, these formalities have gradually evolved and expanded over the decades, and all too often, no serious attempt has been made at simplification or rationalization. Very often, these formalities do not contribute anything to the effective implementation of Customs controls. This situation has been recognized for some time in the Customs Cooperation Council (CCC) where an International Convention on the Simplification and Harmonization of Customs Procedures was adopted in 1974. This Convention (known as the Kyoto Convention) has 55 signatories. With an overall membership of 135, the CCC clearly has ample scope for expanding the implementation of the Kyoto Convention. There are currently plans to update the Convention to take account of recent developments such as the use of simplified Customs procedures and the more widespread use of information technology (IT).

10. In reforming existing Customs practices to further facilitate the movement of goods, Customs should adopt modern business process re-engineering (transformation) techniques to identify inefficient and/or redundant activities for streamlining or elimination.

11. Recommendation 2

Customs authorities should urgently examine their existing practices and institute a programme of reform for those procedures that are identified as inefficient or redundant. Reference should be made to existing international conventions on Customs process simplification and harmonization (the Kyoto Convention of the CCC). This should be undertaken with national trade and transport interests to ensure full coordination of carrier, port and Customs controls.

3. Information Technology (IT)

12. Perhaps the biggest contribution to facilitative Customs procedures can be made through the proper application of information technology (IT). Indeed, not only can IT permit Customs formalities to be completed much more quickly, it can also act as a catalyst for the reform of existing inefficient procedures, since an essential part of the task of automation involves a fresh

look at current working methods. The importance of IT to Customs has long been recognized by the CCC, which has been promoting its use amongst its members.

13. Many Customs authorities now use computers to some extent in their work, although not all have automated facilities for the release of cargo. This situation is improving quite rapidly, however, with many Customs authorities having developed their own application systems or implementing a generic Customs system such as UNCTAD's ASYCUDA system.

14. With the use of automation in Customs now firmly under way, attention has begun to be focused on another aspect of IT which is having a major impact in all areas of international trade. The merging of computer technology with communications technology provides an opportunity to speed up the international trade transaction and to eliminate some of the paperwork that accompanies the movement of goods. Electronic data interchange (EDI) usage is spreading quite rapidly, and Customs authorities have been quick to grasp its importance. A growing number of administrations now offer traders the option of submitting their Customs documentation in electronic format rather than on paper.

15. As with many aspects of IT, the use of internationally accepted technical standards in EDI are critical to its future success and more widespread use. The CCC has recommended to its members that they should use the UN/EDIFACT standard for EDI messaging.

16. Recommendation 3

Customs authorities should make maximum use of information technology to assist them in the efficient performance of their duties. Computer applications for the Customs processing of commercial transactions should be developed. Computer interfaces (using UN/EDIFACT data interchange standards) which allow for the electronic submission of manifests, goods declarations, etc. should be developed and made available to traders.

4. Segregation of clearance processes.

17. A feature of the Customs clearance process in many countries is the practice of completing all Customs formalities while the goods are still under Customs control. It is argued that Customs control over the goods is a means of guaranteeing payment of any duties or taxes for which the importer may be liable. It is also argued that while Customs still retains control over the goods, any difficulties or questions that may arise with respect to the consignment can be easily verified by inspection of the merchandise.

18. Mechanisms currently exist for securing payment of any duty liabilities without detention of the goods. It is therefore possible to envisage a process whereby the goods could be released on presentation of a very simplified declaration, while the full detailed declaration could be submitted at a later date. The simplified declaration would contain sufficient information to enable Customs to identify the goods and to

make an informed decision with regard to the physical inspection of the merchandise. In practice, this would mean the need for no more than six or seven critical items of data about the consignment.

19. The implementation of a process such as this would greatly speed up the release of consignments and would be a major facilitation measure. Appropriate safeguards to protect revenue and other Customs interests, as well as those of other agencies, would need to be built into the procedures.

20. Recommendation 4

Customs authorities should examine closely the possibility of separating the process of goods release from the processes of revenue collection, accounting and statistical reporting.

5. Risk management

21. All Customs authorities carry out intensive physical examination of import, export and transit consignments. The difference between individual authorities is in the proportion of consignments that are subjected to such scrutiny. It may be as low as 4 or 5 per cent or it may be as high as 100 per cent.

22. It is generally recognized today that carrying out a physical examination of all consignments not only causes major congestion at points of entry and delays to cargo clearance, it is also an inefficient and unproductive use of scarce manpower resources. In general, a high proportion of physical examinations is simply not a practical proposition. Many administrations have resorted to risk management techniques in order to speed up the flow of goods while at the same time maintaining an effective deterrent against fraud.

23. Selectivity is the key to identifying high-risk cargo, the examination of which is more likely to yield positive results. It is a technique that can be used in a manual Customs processing environment, but it is particularly suited to an automated environment where the computer can be used to assess the risk of a particular consignment and advise the Customs officer on the most appropriate course of action.

24. Recommendation 5

To ensure the effective use of scarce manpower resources, Customs should use risk assessment, profiling and selectivity techniques to identify high-risk consignments for physical examination. The proportion of consignments to be physically examined by Customs should be kept to a minimum consistent with accomplishment of control objectives.

6. Pre-arrival processing

25. A major step forward in trade facilitation could be achieved if Customs formalities could be largely accomplished **before** the arrival of the goods at the point of import or export. In many cases the information required to complete such formalities is available to traders, shipping agents and Customs clearing agents prior to arrival. If Customs afforded a facility to traders

which enabled the submission of pre-arrival declaration data, then cargo not requiring closer scrutiny could be moved very rapidly out of Customs control upon arrival.

26. Recommendation 6

Pre-arrival processing of transactions is a measure that can deliver significant trade facilitation benefits, and, with appropriate safeguards, does not compromise in any way the control objectives of Customs. Authorities should take steps to make such facilities available to their clients. The electronic submission of pre-arrival cargo data further facilitates this process.

7. Coordination of official interventions

27. Interventions by governmental agencies other than Customs are a common feature of the release/clearance process for certain products. Apart from physical intervention, it is also quite commonplace for additional supporting documents (e.g. licences, authorizations, etc.) issued by other government agencies to be required by Customs before a cargo may be released. Clearly the multiplicity of interventions at the point of import/export and the extra documentary requirements pose an additional burden on traders. The GATT Agreement contains provisions in relation to such technical barriers to trade aimed at reducing their negative impact.

28. In some countries, Customs (in cooperation with other agencies) are attempting to facilitate trade by ensuring that they need only have contact with one agency, i.e. Customs, for certain procedures. Where such coordination and cooperation is possible, the benefit for trade will be significant. At the very least, where the delegation of all import/export clearance responsibilities to Customs is not feasible, all government agencies should make every attempt to coordinate their interventions in such a way as to cause minimum disruption to trade.

29. Recommendation 7

Clearance of cargo frequently requires the intervention of several government agencies in addition to Customs. Governments should rationalize this process by investing responsibility for all cargo clearance activities in one single authority, i.e. Customs or through coordinated interventions by the agencies concerned.

8. Customs valuation

30. Perhaps the most significant cause for delay and complaint with respect to the import clearance process, and also the greatest risk of fraud and corruption, lies in the method of determining Customs value used in many countries which do not apply the GATT Valuation Agreement. A number of countries, especially in the developing world, have been very reluctant to apply the GATT Valuation Agreement because of the perceived risk to their Customs revenue.

31. The Decision on Customs Valuation agreed under the Uruguay Round makes the GATT Valuation Agreement more acceptable to such countries, as it provides certain safeguards concerning proof of the accuracy of the declared value of imported goods. If a Customs administration has a reasonable doubt in respect of a declared value and this doubt is maintained in spite of the provision of any additional information, Customs has the right to establish the value for duty purposes, taking into account the provisions of the Agreement.

32. In addition to the new Decision on Valuation, it is also envisaged that the Committee on Customs Valuation in GATT will take up a number of issues bearing on the difficulties faced by developing countries in acceding to the Agreement.

33. **Recommendation 8**

Customs valuation procedures can cause significant delays in the clearance of import consignments. Governments should use the Customs valuation method prescribed in the GATT Agreement which is administratively less complex than other methods currently in use in some countries.

34. **Recommendation 9**

Excessively high Customs tariffs encourage evasion through undervaluation and make enforcement more difficult. Where possible, Governments should endeavour to broaden their tax base so that Customs tariffs may be moderated.

9. Cooperation with traders

35. If traders expect greater facilitation of import and export procedures by Customs, then they themselves must be willing to contribute to the building of an environment of trust and cooperation which will enable that facilitation to become reality. Law-breakers make life more difficult for the law-abiding trader. Controls have been devised and implemented which have an impact on **all** commercial operators, including those that are operating legitimately.

36. There is a perception, that is all too widespread in the trading community, that Customs is a barrier that must be circumvented by whatever means possible (legal or illegal). Customs controls have therefore been devised on the basic hypothesis that all people are dishonest. The application of this assumption has inevitably led to the imposition of controls that are interventionist and incompatible with general facilitation.

37. To overcome this apparent impasse, it is clear that there must be movement by all concerned towards an atmosphere of greater cooperation and trust. Customs, for operational reasons and as a facilitation measure, have had to move away from widespread physical inspection of cargo. Even with the use of risk management techniques, this change in operational philosophy exposes Customs legislation to abuse. What is needed is a reciprocal movement on the part of the legitimate trading community towards enhanced cooperation with Customs which could help Customs uncover illegal practices by criminals involved in international trade. It serves nobody's purpose, least of all that of the legitimate trader, to permit the continuation of illegal practices

in relation to trade. It is therefore incumbent upon such traders to cooperate fully with their national Customs authority in uncovering crime in relation to Customs matters.

38. One method of giving tangible expression to this is to conclude Memoranda of Understanding (MOU) between the Customs Authority and various trade operators. Through the medium of such MOUs, Customs and traders can join forces to fight against illegal operators. By participating in such programmes, Customs can gain valuable enforcement intelligence, traders can gain access to greater simplification and facilitation of Customs formalities, and both sides can more fully appreciate each other's problems.

39. Recommendation 10

Governments should take steps to foster a cooperative rather than a confrontational approach to Customs operations. The MOU programme of the CCC should be used as a vehicle for greater cooperation between Customs authorities and commercial operators.

10. Customs integrity

40. Although not perceived as a serious problem in every country, the issue of lack of integrity within Customs services is a very worrying development. Until quite recently this was a taboo subject, even in international meetings of senior Customs officials. In 1993, however, the CCC adopted a Declaration on the topic which is known as the Arusha Declaration. This Declaration acknowledges that corruption within Customs is a growing problem and that it is a very destructive factor within any society. Corruption diminishes the ability of Customs to accomplish its mission properly. The Declaration goes on to recommend the establishment of a national Customs integrity programme which must take into account a set of 12 measures (including inducements and sanctions) which are also listed in the Declaration. If implemented, this programme would go a long way towards restoring a high standard of ethical behaviour to Customs authorities which are afflicted with this malaise.

41. Corruption in the conduct of international trade is not confined to Customs authorities. Effective measures need also to be taken against unscrupulous traders who offer illegal inducements to Customs officials in return for special treatment.

42. Integrity problems within Customs are frequently cited as one of the principal reasons underlying government decisions to engage the services of pre-shipment inspection (PSI) agencies to carry out Customs functions. These private companies, it is argued, remove much of the discretionary power from Customs officials and thus eliminate the opportunities for irregular payments.

43. While such inspection companies may have a role to play in the short term, it is the view of the CCC that only by investing in and reforming the national Customs service will it be possible to provide an economic, long-term solution to the problem. Long-term use of PSI is expensive, is of questionable efficiency and results in the erosion of governmental structures, which compromises national sovereignty.

44. Recommendation 11

Governments should take steps to ensure the highest level of integrity and professional standards within their Customs service. The measures identified by the CCC in the Arusha Declaration on Integrity in Customs should be implemented. Effective sanctions are also required to discourage low standards of integrity in the trading community.

45. Recommendation 12

While recourse to the services of pre-shipment inspection agencies to carry out Customs-related activities might be a necessity in certain circumstances, this should be regarded as an interim measure, and Governments should avoid long-term use of such services. Where appropriate, Governments should institute Customs reform programmes aimed at enhancing the efficiency and effectiveness of their Customs services, thereby avoiding the need to use the services of PSI agencies.

11. Performance of Customs clearing agents/brokers, etc.

46. The process of importing or exporting goods is a complex operation involving many players. While Customs has an important role to play, it is by no means the only participant which introduces delays into the process. Much of Customs work in relation to the clearance of goods involves the processing of information. This information is usually received from a number of sources. These include shipping agents, freight forwarders and, most importantly, Customs clearing agents/brokers acting on behalf of importers or exporters. Clearly if the information received from these operators is incomplete or is not of a high quality, then processing delays will occur, giving rise to the rejection of Customs Declarations and delays in Customs clearance. The CCC has developed a methodology for carrying out studies on the delays involved in the Customs clearance process with a view to identifying the causes of these delays in specific locations. Traders should cooperate with Customs in carrying out such studies and in instituting reforms to overcome these delays.

47. Recommendation 13

Not all delays in the release of goods are caused by Customs. Inefficiency and lack of professionalism on the part of some shipping agents, freight forwarders and Customs clearing agents/brokers are also contributing factors. To overcome this problem, Governments should set minimum standards for these professions and closely regulate performance.

48. Recommendation 14

To ensure maximum transparency of Customs operations, Customs authorities should provide the trading community with information on Customs formalities and requirements. Such information should be kept up to date and should be easily accessible.

12. Intergovernmental data exchange

49. One of the measures that could have a significant impact on facilitation of imports while enhancing enforcement performance is greater information exchange between Customs authorities on commercial consignments. If the importing Customs authority had access to the data submitted to the Customs authority in the country of export and could accept such data as a basis for the import declaration, this would substantially enhance controls and, if received in advance of the cargo, also facilitate rapid clearance.

50. The practical application of such an arrangement is fraught with difficulty from a political viewpoint. It is likely that Governments would only agree to the exchange of such data on a bilateral basis. It is also likely that the data would not be available for all products being traded. Technically speaking, however, there are few obstacles to this process, and the legitimate trader would have nothing to fear from its implementation.

51. Another mechanism for making export data available to the importing country is through the use of multi-functional document sets which can be used as an export declaration and subsequently form the basis of the import declaration.

52. Recommendation 15

To enhance Customs controls and to facilitate import clearance, Governments should, on a bilateral (or multilateral) basis, consider the routine electronic transmission of export data from the country of export to the Customs authority of the importing country.

13. Resources

53. Customs authorities have a key role to play in both developed and developing economies. To perform properly the many tasks that are required of today's Customs administrations, it is clear that adequate human and material resources must be placed at their disposal. Governments must recognize that it is counterproductive to deny Customs the resources it requires to function properly. Money wisely invested in Customs will pay handsome dividends, not only to the Government in terms of increased revenues and improved controls, but also to the trading community in terms of facilitated trade.

54. Recommendation 16

To ensure that it performs its designated role efficiently, effectively and to a high standard of professional ethics, Customs needs to be properly resourced. A Customs service starved of resources will certainly be an obstacle to trade. Governments should ensure that Customs are adequately resourced to carry out their functions.

14. The Customs Cooperation Council

55. The Customs Cooperation Council was founded in 1952. Today it has over 130 member Customs administrations throughout the developed and developing world. Its task is to promote the simplification and harmonization

of Customs formalities in its member administrations and also to encourage cooperation in the field of enforcement. The CCC has developed numerous international conventions, recommendations and other instruments aimed at achieving these objectives. Practical implementation of these instruments varies a great deal. Some, such as the Harmonized System, are widely used. Others have a lesser level of acceptance. The CCC has developed the basic ground rules for more efficient Customs. It has access, through its members, to a large body of expertise in Customs matters. This asset should be used to the maximum extent possible in the implementation of many of the recommendations identified in this paper. Resources will of course be required to enable this to happen. However, given the emphasis now being placed on greater liberalization of trade and the necessity for the simplification of the associated formalities, there is an urgent need for Customs reform in many countries. The CCC stands ready to contribute fully to this effort.

56. Recommendation 17

The Customs Cooperation Council, as the international organization for Customs matters, has a key role to play with regard to the implementation of many of the above recommendations by its member administrations. Governments should ensure, through their representatives on the Council's ruling body, that the CCC is adequately resourced to carry out the urgent technical assistance tasks which it is called upon to do.